

AMENDED IN SENATE MARCH 15, 2010

AMENDED IN SENATE JULY 1, 2009

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

**No. 846**

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**Introduced by Assembly Member Torrico**

February 26, 2009

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An act to *add Section 12999.7 to the Food and Agricultural Code*, to add Sections 25196.5 and 42402.6 to the Health and Safety Code, to add Section 6437 to the Labor Code, and to add Section 13363 to the Water Code, relating to civil and administrative penalties.

### LEGISLATIVE COUNSEL'S DIGEST

AB 846, as amended, Torrico. State agencies: civil and administrative penalties.

The Administrative Procedure Act contains provisions governing the conduct of administrative adjudication for state agencies.

This bill would require the *Director of Pesticide Regulation*, the Department of Toxic Substances Control, the State Air Resources Board, the Department of Industrial Relations, and the State Water Resources Control Board to update the maximum and minimum amounts of specified civil and administrative penalties for inflation *or deflation* using the Consumer Price Index, as provided. The bill would require, ~~if a penalty below these maximum levels~~ *an administrative or civil*

penalty below the maximum monetary level authorized pursuant to those provisions is sought, that the penalty be assessed, at a minimum, at a level that recovers *non-de minimis* economic benefits derived by the violator, except as specified. Because local air districts, *county agricultural commissioners*, and unified program agencies would be subject to this requirement, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known, and may be cited, as the
- 2 California Civil Penalties Inflation Supplement and Enforcement
- 3 Act of ~~2009~~ 2010.
- 4 SEC. 2. Section 12999.7 is added to the Food and Agricultural
- 5 Code, to read:
- 6 12999.7. (a) (1) The director shall update, by February 15,
- 7 2011, and on January 1 every four years thereafter, all civil and
- 8 administrative penalties imposed pursuant to this article, Section
- 9 14027, and Article 5 (commencing with Section 11891) of Chapter
- 10 4 of Division 6 to adjust the maximum and minimum amounts
- 11 specified in those provisions for inflation or deflation, as
- 12 established by the amount by which the Consumer Price Index for
- 13 the month of June of the year prior to the adjustment exceeds, or
- 14 is less than, the Consumer Price Index for June of the calendar
- 15 year in which legislation was last enacted establishing or amending
- 16 the amount of the penalty.
- 17 (2) The amount of any penalties determined pursuant to this
- 18 subdivision shall be rounded as follows:
- 19 (A) To the nearest multiple of ten dollars (\$10) in the case of a
- 20 penalty less than or equal to one hundred dollars (\$100).

1 (B) To the nearest multiple of one hundred dollars (\$100) in  
2 the case of a penalty greater than one hundred dollars (\$100) but  
3 less than or equal to one thousand dollars (\$1,000).

4 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
5 the case of a penalty greater than one thousand dollars (\$1,000)  
6 but less than or equal to ten thousand dollars (\$10,000).

7 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
8 the case of a penalty greater than ten thousand dollars (\$10,000)  
9 but less than or equal to one hundred thousand dollars (\$100,000).

10 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
11 in the case of a penalty greater than one hundred thousand dollars  
12 (\$100,000) but less than or equal to two hundred thousand dollars  
13 (\$200,000).

14 (F) To the nearest multiple of twenty-five thousand dollars  
15 (\$25,000) in the case of a penalty greater than two hundred  
16 thousand dollars (\$200,000).

17 (3) Inflation adjustments made pursuant to this subdivision shall  
18 be exempt from the requirements of Chapter 3.5 (commencing with  
19 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
20 Code.

21 (b) (1) If the director or a commissioner seeks to impose an  
22 administrative or civil penalty below the maximum monetary level  
23 authorized pursuant to this article, Section 14027, or Article 5  
24 (commencing with Section 11891) of Chapter 4 of Division 6, as  
25 adjusted by subdivision (a), the director or a commissioner shall  
26 calculate, and make express findings concerning, the non-de  
27 minimis economic benefits, if any, derived by the violator from the  
28 acts that constitute the violation. At a minimum, liability shall be  
29 assessed at a level that recovers those economic benefits, unless  
30 the director or a commissioner makes express findings that  
31 document that good faith efforts to comply or inability to pay justify  
32 a reduction and that the liability assessed will maintain the  
33 deterrent effect of the penalty.

34 (2) As used in this subdivision, the following terms have the  
35 following meanings:

36 (A) “De minimis” means an economic benefit that is likely to  
37 be small, and substantially disproportionate resources would be  
38 required to determine the amount and assess the penalty above  
39 that amount. The director or a commissioner may adopt rules and  
40 regulations to determine specific de minimis categories.

1 (B) “Economic benefit” means the benefit to the violator from  
2 delaying or avoiding costs associated with compliance. “Economic  
3 benefit” also means profits from illegal activities, including, but  
4 not limited to, activities undertaken without a permit required by  
5 law to engage in the activity.

6 (3) This subdivision does not affect the other enforcement  
7 options available to the director or a commissioner, including  
8 settlements.

9 (c) The director shall report to the Legislature on the  
10 implementation of this section.

11 ~~SEC. 2.~~

12 SEC. 3. Section 25196.5 is added to the Health and Safety  
13 Code, to read:

14 25196.5. (a) (1) The department shall update, by February  
15 15, ~~2010~~ 2011, and on January 1 ~~annually~~ every four years  
16 thereafter, all civil and administrative penalties imposed pursuant  
17 to this chapter to adjust the maximum and minimum amounts  
18 specified in this chapter for inflation *or deflation*, as established  
19 by the amount by which the Consumer Price Index for the month  
20 of June of the year prior to the adjustment exceeds, *or is less than*,  
21 the Consumer Price Index for June of the calendar year in which  
22 legislation was last enacted establishing or amending the amount  
23 of the penalty.

24 (2) The amount of any penalties determined pursuant to this  
25 subdivision shall be rounded as follows:

26 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
27 penalty less than or equal to one hundred dollars (\$100).

28 (B) To the nearest multiple of one hundred dollars (\$100) in the  
29 case of a penalty greater than one hundred dollars (\$100) but less  
30 than or equal to one thousand dollars (\$1,000).

31 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
32 the case of a penalty greater than one thousand dollars (\$1,000)  
33 but less than or equal to ten thousand dollars (\$10,000).

34 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
35 the case of a penalty greater than ten thousand dollars (\$10,000)  
36 but less than or equal to one hundred thousand dollars (\$100,000).

37 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
38 in the case of a penalty greater than one hundred thousand dollars  
39 (\$100,000) but less than or equal to two hundred thousand dollars  
40 (\$200,000).

1 (F) To the nearest multiple of twenty-five thousand dollars  
2 (\$25,000) in the case of a penalty greater than two hundred  
3 thousand dollars (\$200,000).

4 (3) Inflation adjustments made pursuant to this subdivision shall  
5 be exempt from the requirements of Chapter 3.5 (commencing  
6 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
7 Government Code.

8 (b) (1) If the department or a unified program agency seeks to  
9 impose a ~~penalty below the maximum levels set~~ *an administrative*  
10 *or civil penalty below the maximum monetary level authorized*  
11 pursuant to this chapter, as adjusted by subdivision (a), the  
12 department or unified program agency shall calculate, and make  
13 express findings concerning, the *non-de minimis* economic benefits,  
14 if any, derived by the violator from the acts that constitute the  
15 violation. At a minimum, liability shall be assessed at a level that  
16 recovers those economic benefits, unless the department or unified  
17 program agency makes express findings that document that good  
18 faith efforts to comply or inability to pay justify a reduction and  
19 that the liability assessed will maintain the deterrent effect of the  
20 penalty.

21 (2) *As used in this subdivision, the following terms have the*  
22 *following meanings:*

23 (A) *“De minimis” means an economic benefit that is likely to*  
24 *be small, and substantially disproportionate resources would be*  
25 *required to determine the amount and assess the penalty above*  
26 *that amount. The department or a unified program agency may*  
27 *adopt rules and regulations to determine specific de minimis*  
28 *categories.*

29 (B) *“Economic benefit” means the benefit to the violator from*  
30 *delaying or avoiding costs associated with compliance. “Economic*  
31 *benefit” also means profits from illegal activities, including, but*  
32 *not limited to, activities undertaken without a permit required by*  
33 *law to engage in the activity.*

34 (3) *This subdivision does not affect the other enforcement*  
35 *options available to the department or a unified program agency,*  
36 *including settlements.*

37 (c) The department shall report to the Legislature on the  
38 implementation of this section.

1     ~~SEC. 3.~~

2     SEC. 4. Section 42402.6 is added to the Health and Safety  
3     Code, to read:

4     42402.6. (a) (1) The state board shall update, by February 15,  
5     2010 2011, and on January 1 ~~annually~~ *every four years* thereafter,  
6     all civil and administrative penalties imposed pursuant to this  
7     division to adjust the maximum and minimum amounts specified  
8     in this division for inflation *or deflation*, as established by the  
9     amount by which the Consumer Price Index for the month of June  
10    of the year prior to the adjustment exceeds, *or is less than*, the  
11    Consumer Price Index for June of the calendar year in which  
12    legislation was last enacted establishing or amending the amount  
13    of the penalty.

14    (2) The amount of any penalties determined pursuant to this  
15    subdivision shall be rounded as follows:

16    (A) To the nearest multiple of ten dollars (\$10) in the case of a  
17    penalty less than or equal to one hundred dollars (\$100).

18    (B) To the nearest multiple of one hundred dollars (\$100) in the  
19    case of a penalty greater than one hundred dollars (\$100) but less  
20    than or equal to one thousand dollars (\$1,000).

21    (C) To the nearest multiple of one thousand dollars (\$1,000) in  
22    the case of a penalty greater than one thousand dollars (\$1,000)  
23    but less than or equal to ten thousand dollars (\$10,000).

24    (D) To the nearest multiple of five thousand dollars (\$5,000) in  
25    the case of a penalty greater than ten thousand dollars (\$10,000)  
26    but less than or equal to one hundred thousand dollars (\$100,000).

27    (E) To the nearest multiple of ten thousand dollars (\$10,000)  
28    in the case of a penalty greater than one hundred thousand dollars  
29    (\$100,000) but less than or equal to two hundred thousand dollars  
30    (\$200,000).

31    (F) To the nearest multiple of twenty-five thousand dollars  
32    (\$25,000) in the case of a penalty greater than two hundred  
33    thousand dollars (\$200,000).

34    (3) Inflation adjustments made pursuant to this subdivision shall  
35    be exempt from the requirements of Chapter 3.5 (commencing  
36    with Section 11340) of Part 1 of Division 3 of Title 2 of the  
37    Government Code.

38    (b) (1) If the state board or a district seeks to impose a penalty  
39    ~~below the maximum levels set~~ *an administrative or civil penalty*  
40    *below the maximum monetary level authorized* pursuant to this

1 division, as adjusted by subdivision (a), the state board or district  
2 shall calculate, and make express findings concerning, the *non-de*  
3 *minimis* economic benefits, if any, derived by the violator from  
4 the acts that constitute the violation. At a minimum, liability shall  
5 be assessed at a level that recovers those economic benefits, unless  
6 the state board or district makes express findings that document  
7 that good faith efforts to comply or inability to pay justify a  
8 reduction and that the liability assessed will maintain the deterrent  
9 effect of the penalty.

10 (2) *As used in this subdivision, the following terms have the*  
11 *following meanings:*

12 (A) *“De minimis” means an economic benefit that is likely to*  
13 *be small, and substantially disproportionate resources would be*  
14 *required to determine the amount and assess the penalty above*  
15 *that amount. The state board or a district may adopt rules and*  
16 *regulations to determine specific de minimis categories.*

17 (B) *“Economic benefit” means the benefit to the violator from*  
18 *delaying or avoiding costs associated with compliance. “Economic*  
19 *benefit” also means profits from illegal activities, including, but*  
20 *not limited to, activities undertaken without a permit required by*  
21 *law to engage in the activity.*

22 (3) *This subdivision does not affect the other enforcement*  
23 *options available to the state board or a district, including*  
24 *settlements.*

25 (c) The state board shall report to the Legislature on the  
26 implementation of this section.

27 ~~SEC. 4.~~

28 SEC. 5. Section 6437 is added to the Labor Code, to read:

29 6437. (a) (1) The department shall update, by February 15,  
30 ~~2010~~ 2011, and on January 1 ~~annually~~ every four years thereafter,  
31 all civil and administrative penalties imposed pursuant to this part  
32 to adjust the maximum and minimum amounts specified in this  
33 part for inflation *or deflation*, as established by the amount by  
34 which the Consumer Price Index for the month of June of the year  
35 prior to the adjustment exceeds, *or is less than*, the Consumer Price  
36 Index for June of the calendar year in which legislation was last  
37 enacted establishing or amending the amount of the penalty.

38 (2) The amount of any penalties determined pursuant to this  
39 subdivision shall be rounded as follows:

1 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
2 penalty less than or equal to one hundred dollars (\$100).

3 (B) To the nearest multiple of one hundred dollars (\$100) in the  
4 case of a penalty greater than one hundred dollars (\$100) but less  
5 than or equal to one thousand dollars (\$1,000).

6 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
7 the case of a penalty greater than one thousand dollars (\$1,000)  
8 but less than or equal to ten thousand dollars (\$10,000).

9 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
10 the case of a penalty greater than ten thousand dollars (\$10,000)  
11 but less than or equal to one hundred thousand dollars (\$100,000).

12 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
13 in the case of a penalty greater than one hundred thousand dollars  
14 (\$100,000) but less than or equal to two hundred thousand dollars  
15 (\$200,000).

16 (F) To the nearest multiple of twenty-five thousand dollars  
17 (\$25,000) in the case of a penalty greater than two hundred  
18 thousand dollars (\$200,000).

19 (3) Inflation adjustments made pursuant to this subdivision shall  
20 be exempt from the requirements of Chapter 3.5 (commencing  
21 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
22 Government Code.

23 (b) (1) ~~If the division seeks to impose a penalty below the~~  
24 ~~maximum levels set~~ *an administrative or civil penalty below the*  
25 *maximum monetary level authorized pursuant to this part, as*  
26 *adjusted by subdivision (a), the division shall calculate, and make*  
27 *express findings concerning, the non-de minimis economic benefits,*  
28 *if any, derived by the violator from the acts that constitute the*  
29 *violation. Notwithstanding any other provision of law, at a*  
30 *minimum, liability shall be assessed at a level that recovers those*  
31 *economic benefits, unless the division makes express findings that*  
32 *document that good faith efforts to comply or inability to pay*  
33 *justify a reduction and that the liability assessed will maintain the*  
34 *deterrent effect of the penalty.*

35 (2) *As used in this subdivision, the following terms have the*  
36 *following meanings:*

37 (A) *“De minimis” means an economic benefit that is likely to*  
38 *be small, and substantially disproportionate resources would be*  
39 *required to determine the amount and assess the penalty above*



1 *that amount. The division may adopt rules and regulations to*  
2 *determine specific de minimis categories.*

3 (B) *“Economic benefit” means the benefit to the violator from*  
4 *delaying or avoiding costs associated with compliance. “Economic*  
5 *benefit” also means profits from illegal activities, including, but*  
6 *not limited to, activities undertaken without a permit required by*  
7 *law to engage in the activity.*

8 (3) *This subdivision does not affect the other enforcement*  
9 *options available to the division, including settlements.*

10 (c) The department shall report to the Legislature on the  
11 implementation of this section.

12 ~~SEC. 5.~~

13 SEC. 6. Section 13363 is added to the Water Code, to read:

14 13363. (a) (1) The state board shall update, by February 15,  
15 ~~2010~~ 2011, and on January 1 ~~annually~~ every four years thereafter,  
16 all civil and administrative penalties imposed pursuant to this  
17 division or pursuant to Section 25270.12, 25299, or 25299.76 of  
18 the Health and Safety Code to adjust the maximum and minimum  
19 amounts specified in those provisions for inflation *or deflation*, as  
20 established by the amount by which the Consumer Price Index for  
21 the month of June of the year prior to the adjustment exceeds, *or*  
22 *is less than*, the Consumer Price Index for June of the calendar  
23 year in which legislation was last enacted establishing or amending  
24 the amount of the penalty.

25 (2) The amount of any penalties determined pursuant to this  
26 subdivision shall be rounded as follows:

27 (A) To the nearest multiple of ten dollars (\$10) in the case of a  
28 penalty less than or equal to one hundred dollars (\$100).

29 (B) To the nearest multiple of one hundred dollars (\$100) in the  
30 case of a penalty greater than one hundred dollars (\$100) but less  
31 than or equal to one thousand dollars (\$1,000).

32 (C) To the nearest multiple of one thousand dollars (\$1,000) in  
33 the case of a penalty greater than one thousand dollars (\$1,000)  
34 but less than or equal to ten thousand dollars (\$10,000).

35 (D) To the nearest multiple of five thousand dollars (\$5,000) in  
36 the case of a penalty greater than ten thousand dollars (\$10,000)  
37 but less than or equal to one hundred thousand dollars (\$100,000).

38 (E) To the nearest multiple of ten thousand dollars (\$10,000)  
39 in the case of a penalty greater than one hundred thousand dollars

1 (\$100,000) but less than or equal to two hundred thousand dollars  
2 (\$200,000).

3 (F) To the nearest multiple of twenty-five thousand dollars  
4 (\$25,000) in the case of a penalty greater than two hundred  
5 thousand dollars (\$200,000).

6 (3) Inflation adjustments made pursuant to this subdivision shall  
7 be exempt from the requirements of Chapter 3.5 (commencing  
8 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
9 Government Code.

10 (b) (1) If the state board, a regional board, or a unified program  
11 agency seeks to impose a penalty below the maximum levels set  
12 *an administrative or civil penalty below the maximum monetary*  
13 *level authorized* pursuant to this division or pursuant to Section  
14 25270.12, 25299, or 25299.76 of the Health and Safety Code, as  
15 adjusted by subdivision (a), the state board, a regional board, or a  
16 unified program agency shall calculate, and make express findings  
17 concerning, the *non-de minimis* economic benefits, if any, derived  
18 by the violator from the acts that constitute the violation. At a  
19 minimum, liability shall be assessed at a level that recovers those  
20 economic benefits, unless the state board, a regional board, or a  
21 unified program agency makes express findings that document  
22 that good faith efforts to comply or inability to pay justify a  
23 reduction and that the liability assessed will maintain the deterrent  
24 effect of the penalty. This subdivision does not affect the  
25 requirement to recover economic benefits from a violator, imposed  
26 pursuant to subdivision (e) of Section 13385.

27 (2) *As used in this subdivision, the following terms have the*  
28 *following meanings:*

29 (A) *“De minimis” means an economic benefit that is likely to*  
30 *be small, and substantially disproportionate resources would be*  
31 *required to determine the amount and assess the penalty above*  
32 *that amount. The state board, a regional board, or a unified*  
33 *program agency may adopt rules and regulations to determine*  
34 *specific de minimis categories.*

35 (B) *“Economic benefit” means the benefit to the violator from*  
36 *delaying or avoiding costs associated with compliance. “Economic*  
37 *benefit” also means profits from illegal activities, including, but*  
38 *not limited to, activities undertaken without a permit required by*  
39 *law to engage in the activity.*

1     (3) *This subdivision does not affect the other enforcement*  
2 *options available to the state board, a regional board, or a unified*  
3 *program agency, including settlements.*

4     (c) Except as provided in subdivision (k) of Section 13350 and  
5 paragraph (2) of subdivision (n) of Section 13385, and in Sections  
6 25270.12, 25299, and 25299.50 of the Health and Safety Code,  
7 proceeds from the implementation of subdivision (a) shall be  
8 deposited in the Clean Water Civil Penalty Inflation Account,  
9 which is hereby created in the General Fund, to be expended, upon  
10 appropriation by the Legislature, consistent with Section 13441.  
11 “Proceeds” as used in this subdivision means the amount of the  
12 penalty imposed and collected that is above the amount that was  
13 authorized before the maximum penalty was first adjusted pursuant  
14 to subdivision (a).

15     (d) The state board shall report to the Legislature on the  
16 implementation of this section.

17     ~~SEC. 6.~~

18     SEC. 7. If the Commission on State Mandates determines that  
19 this act contains costs mandated by the state, reimbursement to  
20 local agencies and school districts for those costs shall be made  
21 pursuant to Part 7 (commencing with Section 17500) of Division  
22 4 of Title 2 of the Government Code.